

HOUSE BILL NO. 369

INTRODUCED BY J. LASLOVICH, CYR, ERICKSON, JENT, KEANE, WADDILL

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE MANUFACTURE OR SALE OF CIGARETTES IN A PACKAGE CONTAINING FEWER THAN 20 CIGARETTES OR ROLLING TOBACCO IN A PACKAGE HAVING A NET WEIGHT OF LESS THAN 0.6 OUNCES OF TOBACCO; DEFINING "ROLLING TOBACCO"; PROVIDING FOR CIVIL ENFORCEMENT; AND AMENDING SECTIONS 16-11-111, 16-11-307, AND 16-11-308, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette sales tax -- exemption for sale to tribal member. (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is 18 cents on each package containing 20 cigarettes and, when packages contain ~~more or less~~ OR LESS OTHER than 20 cigarettes, a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a

1 system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department
2 for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based
3 on whether the quota, as established in a cooperative agreement between the department and an Indian
4 tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon
5 providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation
6 selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given
7 a credit or refund. Once the quota has been filled, the department shall immediately notify all affected
8 wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will
9 not be honored for the remainder of the quota period. Quota allocations are not transferable between quota
10 periods or between reservations.

11 (6) The total amount of refunds or credits allowed by the department to all wholesalers claiming
12 the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the
13 tax due on the quota allocation. The department shall determine the amount of refunds or credits for each
14 Indian reservation at the beginning of each fiscal year, using the most recent census data available from
15 the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian
16 reservation."

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18 **Section 2.** Section 16-11-307, MCA, is amended to read:

19 **"16-11-307. Distribution of tobacco products in other than sealed packages prohibited -- minimum**
20 **package size.** (1) A person may not distribute a tobacco product for commercial purposes in other than
21 a sealed package that is provided by the manufacturer and that contains the health warning required by
22 federal law. Single cigarettes may not be sold.

23 (2) A person may not knowingly manufacture or distribute for commercial purposes cigarettes in
24 a package containing fewer than 20 cigarettes or rolling tobacco in a package containing less than 0.6
25 ounces net weight of tobacco. For purposes of 16-11-308 and this section, "rolling tobacco" means any
26 tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be
27 offered to or purchased by consumers as tobacco for making cigarettes."

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29 **Section 3.** Section 16-11-308, MCA, is amended to read:

30 **"16-11-308. Civil penalties -- license suspension -- tobacco ~~Tobacco~~ education fee.** (1) Failure to

1 obtain a license, as required by 16-11-303, ~~or failure~~ to post signs, as provided in 16-11-304, or the
2 manufacture or sale of cigarettes or rolling tobacco in violation of the minimum package size requirements
3 of 16-11-111 or 16-11-307 is punishable by a civil penalty of \$100. The department may collect the
4 penalty in the manner provided for the collection of other debts.

5 (2) A person who violates 16-11-305(1) or 16-11-307(1) at any one location within a 3-year
6 period shall be punished as follows:

7 (a) A first through third offense is punishable by a verbal notification of violation.

8 (b) A fourth offense is punishable by a written notice of violation to be sent by the department
9 of public health and human services to the owner of the establishment.

10 (c) A fifth offense is punishable by assessment against the owner of the establishment of a
11 tobacco education fee of \$500. The employee or other person who sold the tobacco product, the
12 establishment manager, and the establishment owner, if the owner is a sole proprietor or partner, shall read
13 and view the tobacco education material.

14 (d) A sixth offense under 16-11-305(1) or 16-11-307(1) or a third offense under 16-11-307(2)
15 is punishable by suspension of the licenses required by 16-11-120 and 16-11-303 for 3 months.

16 (e) A seventh and subsequent offense under 16-11-305(1) or 16-11-307(1) or a fourth and
17 subsequent offense under 16-11-307(2) is punishable by suspension of the licenses required by 16-11-120
18 and 16-11-303 for 1 year.

19 (3) After 2 years from the first violation, if a person has not received notice of any further
20 violations, a second violation is considered a first violation for the purposes of subsection (2).

21 (4) A license may not be reissued after suspension under subsection (2)(d) or (2)(e) unless tobacco
22 education fees or civil penalties are paid in full.

23 (5) Tobacco education fees must be assessed and collected by the department of public health
24 and human services. Notice of an assessment pursuant to subsection (2) and this subsection must be
25 made by the department of public health and human services within 30 days of the alleged violation by
26 certified letter addressed to the establishment owner or manager. The notice of assessment against the
27 owner of the establishment must provide an opportunity for a hearing. The hearing may be conducted
28 using electronic equipment and must comply with the provisions of the Montana Administrative Procedure
29 Act. Within 30 days from the date on which the notice of assessment was mailed, the owner or manager
30 shall notify the department of public health and human services that the owner or manager objects to the

1 assessment and request a hearing pursuant to this subsection.

2 (6) In addition to the penalty provided for in subsection (2), a first and subsequent violation of
3 16-11-305(1) or 16-11-307(1) is punishable by an assessment of a tobacco education fee of \$25 against
4 the employee who sold the tobacco product if the employee is not the owner of the establishment. The
5 tobacco education fee must be assessed and collected by the department of public health and human
6 services. Within 30 days of the alleged violation, notice of assessment pursuant to this subsection must
7 be made by the department of public health and human services by certified letter addressed to the
8 employee. The notice of assessment must provide an opportunity for a hearing. The hearing may be
9 conducted using electronic equipment and must comply with the provisions of the Montana Administrative
10 Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the employee
11 shall notify the department of public health and human services that the employee objects to the
12 assessment and requests a hearing pursuant to this subsection.

13 (7) The tobacco education material referred to in this section must be provided by the department
14 of public health and human services in the form of written and video self-teaching materials. The education
15 materials may be used only for the purposes provided in this section. Upon completion of the self-teaching
16 materials, the establishment owner or manager shall execute a written statement on a form provided by
17 the department of public health and human services verifying that the employee, owner, or manager, as
18 appropriate, has read and viewed the self-teaching material and shall return the statement and the
19 self-teaching video to the department of public health and human services.

20 (8) Upon the sixth and subsequent violation of this section, the department of public health and
21 human services shall notify the department of revenue in writing to initiate suspension of the licenses
22 required by 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged violation and
23 of the referral of the licensee's record of violations to the department of revenue for suspension of the
24 licenses pursuant to 16-11-144 and this section. The department of revenue shall review the record of
25 violations and may initiate license suspension proceedings in accordance with 16-11-144. If, upon a review
26 of the record of violations, the department of revenue declines to initiate suspension proceedings, the
27 violation may not be charged against the licensee for the purposes of this section.

28 (9) Fees assessed pursuant to this section must be deposited in the state general fund."
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30 NEW SECTION. **Section 4. Notification to tribal governments.** The secretary of state shall send

- 1 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little
- 2 Shell band of Chippewa.
- 3 - END -